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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,869	12/07/2001	Richard Warren Tanzer	12870.1	6318

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,869

Applicant(s)

TANZER ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) 4, 22, and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 19-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10/29/04 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a first wicking layer bonded to a second retention layer with a bonding agent) are not recited in the rejected claim(s). Claims 1, 19, and 23 recite "a bonding agent for bonding said first wicking layer and said second retention layer". The limitations are directed to an intended use of the bonding agent. Tanzer discloses a bonding agent. Although the Tanzer teaches the bonding agent is used to bond the topsheet and backsheet, the bonding agent is capable of bonding the topsheet and retention layer. Applicant notes the topsheet and backsheet are hydrophobic material. However, the fact that the bonding agent is used to bond hydrophobic webs does not preclude the bonding agent from bonding a hydrophobic material and a hydrophilic material, particularly if the materials are bonded in a discontinued pattern or on the periphery of the materials, such as taught in Bastioli col. 9, lines 22-25. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-3, 5-9, 19-21, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutkiewicz et al. USPN 5843852 in view of Bastioli et al. USPN 5286770.

As to claims 1, 5, 6-9, 19, and 23, Dutkiewicz discloses the present invention substantially as claimed. Dutkiewicz discloses a transport layer having the claimed properties, see col. 6, line 42 through col. 7, line 52. However, Dutkiewicz does not disclose a second retention layer comprising a hydrogel-forming polymeric material. Bastioli discloses a retention layer having hydrogel-forming polymeric material (col. 10, lines 8-11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the article of Dutkiewicz to have a retention layer comprising hydrogel-forming polymeric material for the benefit of increasing moisture absorption in a relatively thin pad.

Dutkiewicz/Bastilio do not disclose the claimed absorbent capacity.

Dutkiewicz/Bastilio recognizes the size and absorbent capacity of the absorbent core may vary to accommodate wearers of different sizes (Bastilio col. 9, line 64 through col. 10, line 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Dutkiewicz/Bastilio with the claimed absorbent capacity, since discovering an optimum value of a result effective variable involves only routine skill in the art.

Dutkiewicz/Bastilio disclose a bonding agent capable of bonding the first layer and second layer (Bastilio col. 9, lines 20-25).

As to claims 2, 20, 24 Dutkiewicz/Bastilio discloses a dry tensile and a wet tensile strength (Dutkiewicz col. 8, lines 26-46). However, Dutkiewicz/Bastilio does not disclose a dry or wet geometric mean breaking length. The liquid transport structure of Dutkiewicz/Bastilio has the same properties (vertical flux) and is used in the same environment as applicant's wicking layer. Therefore, the general conditions of the claimed invention are present in the prior art. Even though Dutkiewicz/Bastilio does not disclose the specific geometric mean breaking length, applicant has not disclosed the claimed geometric mean breaking length value is critical. The claims are structural claims and liquid transport structure, results in a structure that is capable of transporting fluids at a high rate. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of Dutkiewicz/Bastilio with the claimed geometric mean breaking length of the present

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invention, since where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, In re Aller et al. 105 USPQ 233.

5. Claims 3, 21, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutkiewicz/Bastilio as applied to claims 1, 10, 19, and 24 above, and further in view of Noda USPN 5685756.

Dutkiewicz/Bastilio discloses the present invention substantially as claimed. However, Dutkiewicz/Bastilio do not disclose the binding agent is polyhydroxyalkanoate. Noda discloses the use of polyhydroxyalkanoate as a binding agent in a disposable article for the benefit of providing a compostable product (col. 2, lines 1-8). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the invention of Dutkiewicz/Bastilio to comprise polyhydroxyalkanoate for the benefits disclosed in Noda.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within


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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571)272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Examiner
Art Unit 3761

January 19, 2005